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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
8 WESTERN DIVISION
9

10 MARGIE L.,

11 Plaintiff,

12 v.

13 ANDREW M. SAUL, COMMISSIONER
14 OF SOCIAL SECURITY
ADMINISTRATION,

15 Defendant.
16

No. CV 19-1022-PLA

MEMORANDUM OPINION AND ORDER

17 I.

18 **PROCEEDINGS**

19 Margie L.¹ ("plaintiff") filed this action on February 11, 2019, seeking review of the
20 Commissioner's² denial of her application for Disability Insurance Benefits ("DIB"). The parties
21 filed Consents to proceed before a Magistrate Judge on March 4, 2019, and March 11, 2019.
22 Pursuant to the Court's Order, the parties filed a Joint Submission (alternatively "JS") on
23 December 16, 2019, that addresses their positions concerning the disputed issue in the case.
24

25 ¹ In the interest of protecting plaintiff's privacy, this Memorandum Opinion and Order uses
26 plaintiff's (1) first name and last initial, and (2) year of birth in lieu of a complete birth date. See
Fed. R. Civ. P. 5.2(c)(2)(B), Local Rule 5.2-1.

27 ² Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Andrew M. Saul, the
28 newly-appointed Commissioner of the Social Security Administration, is hereby substituted as the
defendant herein.

1 The Court has taken the Joint Submission under submission without oral argument.

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3 II.

4 **BACKGROUND**

5 Plaintiff was born in 1963. [Administrative Record ("AR") at 439.] She has past relevant
6 work experience as a home care provider; as a housekeeper; as a caregiver; and as a cleaner,
7 medical services. [Id. at 26.]

8 On November 20, 2014, plaintiff protectively filed an application for a period of disability
9 and DIB alleging that she has been unable to work since January 27, 2014. [Id. at 17; see also
10 id. at 439-40.] After her application was denied initially and upon reconsideration, plaintiff timely
11 filed a request for a hearing before an Administrative Law Judge ("ALJ"). [Id. at 377-78.] A
12 hearing was held on September 20, 2017, at which time plaintiff appeared represented by an
13 attorney, and testified on her own behalf. [Id. at 271-300.] A medical expert ("ME") and a
14 vocational expert ("VE") also testified. [Id. at 275-82, 291-99.] On January 9, 2018, the ALJ
15 issued a decision concluding that plaintiff was not under a disability from January 27, 2014, the
16 alleged onset date, through June 30, 2014, the date last insured. [Id. at 17-27.] Plaintiff
17 requested review of the ALJ's decision by the Appeals Council. [Id. at 437-38.] When the
18 Appeals Council denied plaintiff's request for review on December 27, 2018 [id. at 1-5], the ALJ's
19 decision became the final decision of the Commissioner. See Sam v. Astrue, 550 F.3d 808, 810
20 (9th Cir. 2008) (per curiam) (citations omitted). This action followed.

21
22 III.

23 **STANDARD OF REVIEW**

24 Pursuant to 42 U.S.C. § 405(g), this Court has authority to review the Commissioner's
25 decision to deny benefits. The decision will be disturbed only if it is not supported by substantial
26 evidence or if it is based upon the application of improper legal standards. Berry v. Astrue, 622
27 F.3d 1228, 1231 (9th Cir. 2010) (citation omitted).

28 "Substantial evidence . . . is 'more than a mere scintilla[.]' . . . [which] means -- and means

1 only -- 'such relevant evidence as a reasonable mind might accept as adequate to support a
2 conclusion.'" Biestek v. Berryhill, 139 S. Ct. 1148, 1154, 203 L. Ed. 2d 504 (2019) (citations
3 omitted); Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir. 2017). "Where evidence is susceptible
4 to more than one rational interpretation, the ALJ's decision should be upheld." Revels, 874 F.3d
5 at 654 (internal quotation marks and citation omitted). However, the Court "must consider the
6 entire record as a whole, weighing both the evidence that supports and the evidence that detracts
7 from the Commissioner's conclusion, and may not affirm simply by isolating a specific quantum
8 of supporting evidence." Id. (quoting Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014)
9 (internal quotation marks omitted)). The Court will "review only the reasons provided by the ALJ
10 in the disability determination and may not affirm the ALJ on a ground upon which he did not rely."
11 Id. (internal quotation marks and citation omitted); see also SEC v. Chenery Corp., 318 U.S. 80,
12 87, 63 S. Ct. 454, 87 L. Ed. 626 (1943) ("The grounds upon which an administrative order must
13 be judged are those upon which the record discloses that its action was based.").

14 15 IV.

16 THE EVALUATION OF DISABILITY

17 Persons are "disabled" for purposes of receiving Social Security benefits if they are unable
18 to engage in any substantial gainful activity owing to a physical or mental impairment that is
19 expected to result in death or which has lasted or is expected to last for a continuous period of
20 at least twelve months. Garcia v. Comm'r of Soc. Sec., 768 F.3d 925, 930 (9th Cir. 2014) (quoting
21 42 U.S.C. § 423(d)(1)(A)).

22 23 A. THE FIVE-STEP EVALUATION PROCESS

24 The Commissioner (or ALJ) follows a five-step sequential evaluation process in assessing
25 whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920; Lounsbury v. Barnhart, 468
26 F.3d 1111, 1114 (9th Cir. 2006) (citing Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999)).
27 In the first step, the Commissioner must determine whether the claimant is currently engaged in
28 substantial gainful activity; if so, the claimant is not disabled and the claim is denied. Lounsbury,

1 468 F.3d at 1114. If the claimant is not currently engaged in substantial gainful activity, the
2 second step requires the Commissioner to determine whether the claimant has a “severe”
3 impairment or combination of impairments significantly limiting her ability to do basic work
4 activities; if not, a finding of nondisability is made and the claim is denied. Id. If the claimant has
5 a “severe” impairment or combination of impairments, the third step requires the Commissioner
6 to determine whether the impairment or combination of impairments meets or equals an
7 impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R. § 404, subpart P,
8 appendix 1; if so, disability is conclusively presumed and benefits are awarded. Id. If the
9 claimant’s impairment or combination of impairments does not meet or equal an impairment in
10 the Listing, the fourth step requires the Commissioner to determine whether the claimant has
11 sufficient “residual functional capacity” to perform her past work; if so, the claimant is not disabled
12 and the claim is denied. Id. The claimant has the burden of proving that she is unable to
13 perform past relevant work. Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992). If the
14 claimant meets this burden, a prima facie case of disability is established. Id. The
15 Commissioner then bears the burden of establishing that the claimant is not disabled because
16 there is other work existing in “significant numbers” in the national or regional economy the
17 claimant can do, either (1) by the testimony of a VE, or (2) by reference to the Medical-
18 Vocational Guidelines at 20 C.F.R. part 404, subpart P, appendix 2. Lounsbury, 468 F.3d at
19 1114. The determination of this issue comprises the fifth and final step in the sequential
20 analysis. 20 C.F.R. §§ 404.1520, 416.920; Lester v. Chater, 81 F.3d 721, 828 n.5 (9th Cir.
21 1995); Drouin, 966 F.2d at 1257.

22 23 **B. THE ALJ’S APPLICATION OF THE FIVE-STEP PROCESS**

24 At step one, the ALJ found that plaintiff had not engaged in substantial gainful activity
25 during the period from January 27, 2014, the alleged onset date, through June 30, 2014, her date
26 last insured. [AR at 19.] At step two, the ALJ concluded that through the date last insured,
27 plaintiff had the severe impairments of degenerative disc disease of the lumbar spine; and carpal
28 tunnel syndrome of the right wrist, status-post carpal tunnel release surgery. [Id.] At step three,

1 the ALJ determined that through the date last insured, plaintiff did not have an impairment or a
2 combination of impairments that meets or medically equals any of the impairments in the Listing.
3 [Id. at 22.] The ALJ further found that through the date last insured, plaintiff retained the residual
4 functional capacity ("RFC")³ to perform light work as defined in 20 C.F.R. § 404.1567(b):⁴

5 [I]ncluding lifting up to 20 pounds occasionally and 10 pounds frequently, standing
6 and/or walking up to 6 hours in an 8-hour workday, and sitting up to 6 hours in an
7 8-hour workday, with the following restrictions: she can only occasionally perform
postural activities; she must avoid ladders, unprotected heights and moving
machinery.

8 [Id.] At step four, based on plaintiff's RFC and the testimony of the VE, the ALJ concluded that
9 through her date last insured, plaintiff was able to perform her past relevant work as a
10 housekeeper. [Id. at 26, 295-96.] Accordingly, the ALJ determined that plaintiff was not disabled
11 at any time from the alleged onset date of January 27, 2014, through June 30, 2014, the date last
12 insured. [Id. at 27.]

13 14 V.

15 THE ALJ'S DECISION

16 Plaintiff contends that the ALJ erred when she failed to properly consider plaintiff's
17 subjective symptom testimony. [JS at 4.] As set forth below, the Court agrees with plaintiff and
18 remands for further proceedings.

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21 ³ RFC is what a claimant can still do despite existing exertional and nonexertional
22 limitations. See Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). "Between steps
23 three and four of the five-step evaluation, the ALJ must proceed to an intermediate step in which
the ALJ assesses the claimant's residual functional capacity." Massachi v. Astrue, 486 F.3d 1149,
1151 n.2 (9th Cir. 2007) (citation omitted).

24 ⁴ "Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying
25 of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this
26 category when it requires a good deal of walking or standing, or when it involves sitting most of the
27 time with some pushing and pulling of arm or leg controls. To be considered capable of performing
a full or wide range of light work, you must have the ability to do substantially all of these activities.
28 If someone can do light work, we determine that he or she can also do sedentary work, unless there
are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time."
20 C.F.R. § 404.1567(b).

1 **A. LEGAL STANDARD**

2 Prior to the ALJ's assessment in this case, Social Security Ruling ("SSR")⁵ 16-3p went into
3 effect. See SSR 16-3p, 2017 WL 5180304 (Oct. 25, 2017).⁶ SSR 16-3p supersedes SSR 96-7p,
4 the previous policy governing the evaluation of subjective symptoms. SSR 16-3p, 2017 WL
5 5180304, at *2. SSR 16-3p indicates that "we are eliminating the use of the term 'credibility' from
6 our sub-regulatory policy, as our regulations do not use this term." Id. Moreover, "[i]n doing so,
7 we clarify that subjective symptom evaluation is not an examination of an individual's character[;]
8 [i]nstead, we will more closely follow our regulatory language regarding symptom evaluation." Id.;
9 Trevizo, 871 F.3d at 678 n.5. Thus, the adjudicator "will not assess an individual's overall
10 character or truthfulness in the manner typically used during an adversarial court litigation. The
11 focus of the evaluation of an individual's symptoms should not be to determine whether he or she
12 is a truthful person." SSR 16-3p, 2017 WL 5180304, at *11. The ALJ is instructed to "consider
13 all of the evidence in an individual's record," "to determine how symptoms limit ability to perform
14 work-related activities." Id. at *2. The Ninth Circuit also noted that SSR 16-3p "makes clear what
15 our precedent already required: that assessments of an individual's testimony by an ALJ are
16 designed to 'evaluate the intensity and persistence of symptoms after [the ALJ] find[s] that the
17 individual has a medically determinable impairment(s) that could reasonably be expected to
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20 ⁵ "SSRs do not have the force of law. However, because they represent the Commissioner's
21 interpretation of the agency's regulations, we give them some deference. We will not defer to SSRs
22 if they are inconsistent with the statute or regulations." Holohan v. Massanari, 246 F.3d 1195, 1202
n.1 (9th Cir. 2001) (citations omitted).

23 ⁶ SSR 16-3p, originally "effective" on March 28, 2016, was republished on October 25, 2017,
24 with the revision indicating that SSR 16-3p was "applicable [rather than effective] on March 28,
25 2016." See 82 Fed. Reg. 49462, 49468 & n.27, 2017 WL 4790249, 4790249 (Oct. 25, 2017);
26 SSR 16-3p, 2017 WL 5180304 (Oct. 25, 2017). Other than also updating "citations to reflect
27 [other] revised regulations that became effective on March 27, 2017," the Administration stated
28 that SSR 16-3p "is otherwise unchanged, and provides guidance about how we evaluate
statements regarding the intensity, persistence, and limiting effects of symptoms in disability
claims" Id. The Ninth Circuit recently noted that SSR 16-3p is consistent with its prior
precedent. Trevizo v. Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (SSR 16-3p "makes clear
what [Ninth Circuit] precedent already required"). Thus, while SSR 16-3p eliminated the use of
the term "credibility," case law using that term is still instructive in the Court's analysis.

1 produce those symptoms,' and 'not to delve into wide-ranging scrutiny of the claimant's character
2 and apparent truthfulness.'" Trevizo, 871 F.3d at 678 n.5 (citing SSR 16-3p).

3 To determine the extent to which a claimant's symptom testimony must be credited, the
4 Ninth Circuit has "established a two-step analysis." Trevizo, 871 F.3d at 678 (citing Garrison, 759
5 F.3d at 1014-15). "First, the ALJ must determine whether the claimant has presented objective
6 medical evidence of an underlying impairment which could reasonably be expected to produce
7 the pain or other symptoms alleged." Id. (quoting Garrison, 759 F.3d at 1014-15); Treichler v.
8 Comm'r of Soc. Sec. Admin., 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting Lingenfelter v. Astrue,
9 504 F.3d 1028, 1036 (9th Cir. 2007)) (internal quotation marks omitted). If the claimant meets the
10 first test, and the ALJ does not make a "finding of malingering based on affirmative evidence
11 thereof" (Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006)), the ALJ must "evaluate
12 the intensity and persistence of [the] individual's symptoms . . . and determine the extent to which
13 [those] symptoms limit [her] . . . ability to perform work-related activities" SSR 16-3p, 2017
14 WL 5180304, at *4. In assessing the intensity and persistence of symptoms, the ALJ must
15 consider a claimant's daily activities; the location, duration, frequency, and intensity of the pain
16 or other symptoms; precipitating and aggravating factors; the type, dosage, effectiveness and side
17 effects of medication taken to alleviate pain or other symptoms; treatment, other than medication
18 received for relief of pain or other symptoms; any other measures used to relieve pain or other
19 symptoms; and other factors concerning a claimant's functional limitations and restrictions due
20 to pain or other symptoms. 20 C.F.R. § 416.929; see also Smolen v. Chater, 80 F.3d 1273, 1283-
21 84 & n.8 (9th Cir. 1996); SSR 16-3p, 2017 WL 5180304, at *4 (the Commisisoner "examine[s]
22 the entire case record, including the objective medical evidence; an individual's statements . . .
23 ; statements and other information provided by medical sources and other persons; and any other
24 relevant evidence in the individual's case record.").

25 Where, as here, plaintiff has presented evidence of an underlying impairment, and the ALJ
26 did not make a finding of malingering, the ALJ's reasons for rejecting a claimant's subjective
27 symptom statements must be specific, clear and convincing. Brown-Hunter v. Colvin, 806 F.3d
28 487, 488-89 (9th Cir. 2015); Burrell v. Colvin, 775 F.3d 1133, 1136 (9th Cir. 2014) (citing Molina

1 | v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012)); Trevizo, 871 F.3d at 678 (citing Garrison, 759
2 | F.3d at 1014-15); Treichler, 775 F.3d at 1102. "General findings [regarding a claimant's credibility]
3 | are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence
4 | undermines the claimant's complaints." Burrell, 775 F.3d at 1138 (quoting Lester, 81 F.3d at 834)
5 | (quotation marks omitted). The ALJ's findings "'must be sufficiently specific to allow a reviewing
6 | court to conclude the adjudicator rejected the claimant's testimony on permissible grounds and
7 | did not arbitrarily discredit a claimant's testimony regarding pain.'" Brown-Hunter, 806 F.3d at 493
8 | (quoting Bunnell v. Sullivan, 947 F.2d 341, 345-46 (9th Cir. 1991) (en banc)). A "reviewing court
9 | should not be forced to speculate as to the grounds for an adjudicator's rejection of a claimant's
10 | allegations of disabling pain." Bunnell, 947 F.2d at 346. As such, an "implicit" finding that a
11 | plaintiff's testimony is not credible is insufficient. Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir.
12 | 1990) (per curiam).

14 | **B. THE ALJ'S DECISION**

15 | Plaintiff contends the ALJ failed to articulate legally sufficient reasons for rejecting plaintiff's
16 | subjective symptom testimony. [JS at 4-7.] Specifically, she argues that the ALJ offered
17 | insufficient specific, clear and convincing reasons for finding that plaintiff's testimony was not
18 | consistent with the medical record. [Id. at 7.] She also submits that the Commissioner's
19 | regulations "prohibit rejecting subjective pain testimony solely on the basis of objective medical
20 | evidence," which is the only reason given by the ALJ in her decision. [Id. at 8 (citations omitted).]
21 | The Court agrees.

22 | First, the ALJ summarized plaintiff's testimony as follows:

23 | In connection with [plaintiff's] application for disability insurance benefits, [she]
24 | alleged an inability to engage in competitive employment due to a lower back injury
25 | causing back pain radiating down her leg, carpal tunnel syndrome, hip pain and
26 | right knee pain. . . . In a Function Report, [plaintiff] indicated that she is "always in
27 | pain", that she has carpal tunnel syndrome affecting the use of her hands, as well
28 | as a back injury. She reported that she needs help dressing herself, bathing
herself, and that she has difficulty grooming herself due to difficulty reaching and
holding on to small items. She reported that she is able to prepare simple meals,
and she can do some household chores. She is able to leave her house and drive
a car, she is able to attend doctor's appointments and go grocery shopping and
handle her own finances. She estimated that she could lift no more than ten

1 pounds depending on her pain.

2 [AR at 23 (citing id. at 451-58).] Next, the ALJ stated that plaintiff's statements "concerning the
3 intensity, persistence and limiting effects of those symptoms are not entirely consistent with the
4 medical evidence and other evidence in the record" [Id. at 23.] The ALJ then summarized
5 various medical records regarding plaintiff's back pain and carpal tunnel syndrome dated between
6 November 2013 and June 2014 as discussed in more detail below. [Id. at 23-24.] Finally, she
7 discounted plaintiff's subjective symptom testimony as follows:

8 Ultimately, after considering the objective medical evidence regarding all of
9 [plaintiff's] physical conditions on or before June 30, 2014, the undersigned finds
10 that the clinical findings simply fail to support the alleged severity of symptoms and
11 degree of limitation. Weighing all the relevant factors, the undersigned concludes
that the objective medical evidence on or before June 30, 2014, simply does not
warrant any additional limitations beyond those established in the residual functional
capacity contained herein.

12 [Id. at 24.]

14 C. OBJECTIVE EVIDENCE

15 While a lack of objective medical evidence supporting a plaintiff's subjective complaints
16 cannot provide the only basis to reject a claimant's subjective symptom testimony (Trevizo, 871
17 F.3d at 679 (quoting Robbins, 466 F.3d at 883)), it is one factor that an ALJ can consider in
18 evaluating symptom testimony. See Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005)
19 ("Although lack of medical evidence cannot form the sole basis for discounting pain testimony, it
20 is a factor the ALJ must consider in [her] credibility analysis."); SSR 16-3p, 2017 WL 5180304,
21 at *5 ("objective medical evidence is a useful indicator to help make reasonable conclusions about
22 the intensity and persistence of symptoms, including the effects those symptoms may have on
23 the ability to perform work-related activities for an adult"). "The intensity, persistence, and limiting
24 effects of many symptoms can be clinically observed and recorded in the medical evidence. . .
25 . These findings may be consistent with an individual's statements about symptoms and their
26 functional effects. However, when the results of tests are not consistent with other evidence in
27 the record, they may be less supportive of an individual's statements about pain or other
28 symptoms than test results and statements that are consistent with other evidence in the record."

1 SSR 16-3p, 2017 WL 5180304, at *5. As the Ninth Circuit recently held, “an ALJ’s ‘vague
2 allegation’ that a claimant’s testimony is ‘not consistent with the objective medical evidence,’
3 without any ‘specific finding in support’ of that conclusion, is insufficient.” Treichler, 775 F.3d at
4 1103 (citation omitted); see Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir. 2017) (ALJ’s
5 statement that plaintiff’s testimony regarding the intensity, persistence, and limiting effects of his
6 symptoms was not credible to the extent his testimony is “inconsistent with the above residual
7 functional capacity assessment” is an insufficient basis for discrediting testimony).

8 Here, after finding that plaintiff’s “statements concerning the intensity, persistence and
9 limiting effects of [her alleged] symptoms are not entirely consistent with the medical evidence and
10 other evidence in the record for the reasons explained in this decision” [AR at 23], the ALJ
11 generally summarized the medical evidence she relied on to support that finding. [Id. at 23-24.]
12 For instance, she noted that plaintiff was seen on December 22, 2013, by U.S. HealthWorks
13 Medical Group, where she presented with complaints of “acute onset of lower back pain that
14 occurred while she was at work” making a bed, in her position as a housekeeper at the Hyatt
15 Regency. [Id. (citing id. at 565-68).] The ALJ stated that the treating provider reported that
16 plaintiff had an antalgic gait; her posture appeared “uncomfortable”; she exhibited spasms of the
17 paravertebral musculature and restricted range of motion of the lumbar spine; her heel-toe
18 ambulation was normal; her sensation was intact; and her straight leg raising test was negative
19 although with “some increased lower back pain.” [Id. (citing id. at 565).] An x-ray showed minimal
20 spur formation, but no fractures, subluxation, spondylosis, or spondylolisthesis. [Id. (citing id. at
21 570).] Plaintiff was authorized to return to modified work with restrictions on climbing, changing
22 positions, overhead work, stooping, bending, kneeling, squatting, and lifting over 10 pounds. [Id.
23 (citing id. at 568).]

24 The ALJ also discussed plaintiff’s December 2, 2013, visit to physical medicine specialist
25 Mohammed Amjad Ali Khan M.D., complaining of back pain. [Id. (citing 637-44).] At that time
26 (which was a few weeks prior to the incident at the Hyatt Regency), Dr. Khan noted tenderness
27 in plaintiff’s lumbar spine and negative straight leg raising tests. [Id. (citing id. at 642-43).] Not
28 mentioned by the ALJ, Dr. Khan also noted that plaintiff’s spinal range of motion was limited with

1 pain and she exhibited positive myofascial trigger points; the ALJ also did not mention that Dr.
2 Khan discussed conservative as well as interventional treatment options, such as epidural
3 injections, and that he ordered an MRI of plaintiff's lumbar spine.⁷ [*Id.* at 642-43.]

4 The ALJ next discussed the January 2014 records of George Blankinship, M.D., "a physical
5 medicine specialist . . . who prescribed Ibuprofen and prednisone." [*Id.* at 23 (citing *id.* at 670-
6 71).] As noted by the ALJ, on January 9, 2014, Dr. Blankinship's examination found plaintiff had
7 a decreased range of motion and positive straight leg raising, and recommended that she undergo
8 a lumbar spine MRI. [*Id.* (citing *id.* at 670).] The January 18, 2014, MRI revealed mild discogenic
9 disease at L4-L5, with moderate central canal stenosis and lateral recess narrowing; mild
10 discogenic disease at L5-S1 with mild central canal stenosis and lateral recess narrowing; and
11 multilevel bilateral foraminal narrowing most pronounced at L4-S1. [*Id.* (citing *id.* at 705-06).] On
12 January 30, 2014, Dr. Blankinship recommended that plaintiff undergo a lumbar epidural steroid
13 injection and physical therapy [*id.* at 23-24 (citing *id.* at 735-43)], and in February 2014, she
14 received the injection. [*Id.* at 24 (citing *id.* at 761-62).] The ALJ noted -- without further
15 explanation -- that when plaintiff saw her primary care physician on May 23, 2014, plaintiff did not
16 complain of back pain.⁸ [*Id.* (citing *id.* at 815-21).]

17 The ALJ similarly found that the objective medical evidence regarding plaintiff's right wrist
18 condition "is not consistent with [plaintiff's] extreme allegations." [*Id.* (citing *id.* at 623).] The ALJ
19 noted a November 2013 abnormal nerve conduction study that reflected "moderate to severe
20 carpal tunnel syndrome and positive Tinel's and Phalen's signs"; she also noted that plaintiff
21

22 ⁷ Although the ALJ further noted that there was no improvement in plaintiff's symptoms by
23 January 2014 but that her "clinical presentation appeared to have improved" [AR at 23], the ALJ's
24 citation to pages 3 and 4 of Exhibit 5F [AR at 610-11] relates to plaintiff's treatment for carpal
25 tunnel and does not mention her back issues, let alone reflect an improvement in plaintiff's
26 "clinical presentation."

26 ⁸ To the extent the ALJ was insinuating that plaintiff's failure to discuss her back pain with
27 her primary care physician was a reason to discount plaintiff's testimony, the Court disagrees.
28 Plaintiff had physical medicine specialists who were treating her for her back pain; on May 23,
2014, she saw her primary care physician due to complaints of fatigue, dizziness, and sinus
congestion. [AR at 815.]

1 underwent right carpal tunnel release surgery on January 29, 2014. [Id. (citing id. at 120-22).]
2 The ALJ observed that on June 27, 2014, five months after plaintiff's surgery, an MRI of plaintiff's
3 right wrist "showed findings suggestive of carpal tunnel syndrome, a tear in the triangular fibro-
4 cartilage with mild synovitis, and 'tiny' bone cysts." [Id. (citing id. at 587-91).] She did not provide
5 any explanation as to how these records were purportedly inconsistent with plaintiff's subjective
6 symptom testimony.

7 Finally, after reviewing the objective evidence regarding plaintiff's physical conditions on
8 or before June 30, 2014, the ALJ concluded that "the clinical findings simply fail to support the
9 alleged severity of symptoms and degree of limitation." [Id.]

10 Thus, the ALJ (1) found that plaintiff's testimony concerning the intensity, persistence, and
11 limiting effects of her symptoms was "not entirely consistent with the medical evidence and other
12 evidence in the record" [id. at 23]; (2) generally summarized the medical evidence relating to
13 plaintiff's back pain and carpal tunnel syndrome as discussed above [id. at 23-24]; and (3) stated
14 her conclusion that "the clinical findings simply fail" to support the alleged severity of plaintiff's
15 symptoms and limitations.

16 As discussed above, the "ALJ must identify the testimony that [is being discounted], and
17 specify 'what evidence undermines the claimant's complaints.'" Treichler, 775 F.3d at 1103
18 (citation omitted) (emphasis added); Brown-Hunter, 806 F.3d at 493. Here, other than her general
19 discussion of the medical evidence, the ALJ did not identify the testimony she was discounting
20 and "link that testimony to the particular parts of the record" supporting her determination. Brown-
21 Hunter, 806 F.3d at 494. Indeed, the ALJ's running narrative regarding plaintiff's medical records,
22 while relevant, did not provide "the sort of explanation or the kind of 'specific reasons' we must
23 have in order to review the ALJ's decision meaningfully, so that we may ensure that the claimant's
24 testimony was not arbitrarily discredited," nor can the error be found harmless. Id. at 493
25 (rejecting the Commissioner's argument that because the ALJ set out her RFC and summarized
26 the evidence supporting her determination, the Court can infer that the ALJ rejected the plaintiff's
27 testimony to the extent it conflicted with that medical evidence, because the ALJ "never identified
28 *which* testimony she found not credible, and never explained *which* evidence contradicted that

testimony”) (citing Treichler, 775 F.3d at 1103, Burrell, 775 F.3d at 1138). In fact, a great deal of the above-cited evidence arguably lends support to plaintiff’s subjective symptom allegations during the time period in question.

In short, the ALJ’s finding that plaintiff’s subjective symptom allegations were not supported by the objective medical evidence was not a specific, clear and convincing reason supported by substantial evidence for discounting plaintiff’s subjective symptom testimony. Even assuming this was a specific, clear and convincing reason, the ALJ’s determination to discount plaintiff’s testimony for this reason rises or falls with any other grounds given by the ALJ for discrediting plaintiff’s allegations. Here, because this was the *only* reason given by the ALJ for discounting plaintiff’s testimony, remand is warranted.

D. OTHER REASONS FOR DISCOUNTING PLAINTIFF’S TESTIMONY

Plaintiff argues that in discounting plaintiff’s subjective symptom testimony, the ALJ only relied on the fact that plaintiff’s testimony was not supported by the objective medical evidence. [JS at 8, 10.] Defendant responds that the ALJ “noted that Plaintiff’s conservative treatment regimen was inconsistent with her allegations of extreme symptoms, as was her reported daily activities.” [Id. at 13 (citing AR at 23-24).]

“Long-standing principles of administrative law require [this Court] to review the ALJ’s decision based on the reasoning and factual findings offered *by the ALJ* -- not post hoc rationalizations that attempt to intuit what the adjudicator may have been thinking.” Bray v. Comm’r of Soc. Sec. Admin., 554 F.3d 1219, 1225-26 (9th Cir. 2009) (emphasis added, citation omitted); Pinto v. Massanari, 249 F.3d 840, 847 (9th Cir. 2001) (“[W]e cannot affirm the decision of an agency on a ground that the agency did not invoke in making its decision.”).

As discussed below, the Court determines that the ALJ did not rely on these grounds for discounting plaintiff’s testimony and, even if she did, she did not provide reasons that were specific, clear and convincing, and supported by substantial evidence.

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1 **1. Conservative Treatment**

2 Defendant argues that the ALJ discounted plaintiff's testimony because her "conservative
3 treatment regimen was inconsistent with her allegations of extreme symptoms." [JS at 13 (citing
4 AR at 23-24).] The Court has scoured the ALJ's decision, however, and finds no such "specific,
5 clear and convincing" reason set forth by the ALJ. Although the ALJ mentioned that Dr.
6 Blankinship had prescribed Ibuprofen and prednisone to treat plaintiff's back condition, she did
7 not state that such treatment was conservative and, even if she had so stated, she did not in any
8 way attempt to tie that observation into a reason to discount plaintiff's testimony. Indeed, the ALJ
9 also noted that Dr. Blankinship had recommended that plaintiff receive a lumbar epidural steroid
10 injection -- which she did. There is also evidence in the record that for some period of time during
11 the relevant period, and while she was treating with Dr. Blankinship, plaintiff was prescribed Norco
12 -- an opioid narcotic pain medication. [See, e.g., AR at 735 (January 30, 2014, treatment note),
13 816 (May 23, 2014, treatment note).]

14 Many courts have previously found that strong narcotic pain medications and spinal
15 epidural injections are not considered to be "conservative" treatment. See, e.g., Yang v. Barnhart,
16 2006 WL 3694857, at *4 (C.D. Cal. Dec. 12, 2006) (ALJ's finding that claimant received
17 conservative treatment was not supported by substantial evidence when claimant underwent
18 physical therapy and epidural injections, and was treated with several pain medications); Aguilar
19 v. Colvin, 2014 WL 3557308, at *8 (C.D. Cal. July 18, 2014) ("It would be difficult to fault Plaintiff
20 for overly conservative treatment when he has been prescribed strong narcotic pain
21 medications."); Christie v. Astrue, 2011 WL 4368189, at *4 (C.D. Cal. Sept. 16, 2011) (refusing
22 to characterize treatment with narcotics, steroid injections, trigger point injections, and epidural
23 injections as conservative); see also Childress v. Colvin, 2014 WL 4629593, at *12 (N.D. Cal.
24 Sept. 16, 2014) ("[i]t is not obvious whether the consistent use of [a prescribed narcotic] is
25 'conservative' or in conflict with Plaintiff's pain testimony").

26 In any event, the Court finds that ALJ did not rely on plaintiff's purportedly "conservative"
27 treatment to discount plaintiff's subjective symptom testimony. And, even if she did, in light of the
28 entire record she did not provide reasons that were specific, clear and convincing, and supported

1 by substantial evidence.

2 3 **2. Daily Activities**

4 Defendant also argues that the ALJ discounted plaintiff's testimony because her "reported
5 daily activities" were "inconsistent with her allegations of extreme symptoms." [JS at 13 (citing
6 AR at 23-24).] Again, after reviewing the ALJ's decision, the Court does not find this to be a
7 reason given by the ALJ to discredit plaintiff's testimony. The only mentions of plaintiff's daily
8 activities made by the ALJ were included as part of the ALJ's summary of plaintiff's subjective
9 symptoms as presented by plaintiff in her Adult Function Report and also as provided by her son,
10 Joe Lopez, in a Third-Party Function Report:

11 [Plaintiff] reported that she needs help dressing herself, bathing herself, and that
12 she has difficulty grooming herself due to difficulty reaching and holding on to small
13 items. She reported that she is able to prepare simple meals, and she can do some
14 household chores. She is able to leave her house and drive a car, she is able to
15 attend doctor's appointments and go grocery shopping and handle her own
16 finances.

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18 Mr. Lopez reported that [plaintiff] has some difficulty performing activities of
19 personal care. . . . However, he reported that she makes simple meals, and is able
20 to do "some basic" household chores. Mr. Lopez reported that [plaintiff] goes
21 outside to attend doctor's appointments, and go to the grocery store. She is able
22 to handle her finances. [He] further reported that she can only walk for 15 minutes
23 before she must rest.

24 [AR at 23-24 (citing id. at 473-81, 503-11).] Other than these cursory mentions of plaintiff's
25 activities, the ALJ did not in any way clearly state (or even obliquely suggest) that she was
26 discounting plaintiff's allegations as inconsistent with her daily activities. Neither did she attempt
27 to explain how plaintiff's daily activities were inconsistent with her symptom allegations.⁹

28 ⁹ With respect to Mr. Lopez' report, the ALJ simply stated that his allegations "do not
establish that [plaintiff] is disabled," and discounted his lay witness observations because "he is
not medically trained to make exacting observations as to dates, frequencies, types and degrees
of medical signs and symptoms, or of the frequency or intensity of unusual moods or mannerisms,
the accuracy of the allegations is questionable." [AR at 24.] She also questioned his allegations
because, as plaintiff's son, "he cannot be considered a disinterested third party witness whose
allegations would not tend to be colored by affection for [plaintiff] and a natural tendency to agree
(continued...)

1 The Court finds that ALJ did not in any way rely on plaintiff's daily activities to discount
2 plaintiff's subjective symptom testimony. And, even if she did, in light of the entire record, she did
3 not provide reasons that were specific, clear and convincing, and supported by substantial
4 evidence.

6 VI.

7 REMAND FOR FURTHER PROCEEDINGS

8 The Court has discretion to remand or reverse and award benefits. Trevizo, 871 F.3d at
9 682 (citation omitted). Where no useful purpose would be served by further proceedings, or
10 where the record has been fully developed, it is appropriate to exercise this discretion to direct an
11 immediate award of benefits. Id. (citing Garrison, 759 F.3d at 1019). Where there are
12 outstanding issues that must be resolved before a determination can be made, and it is not clear
13 from the record that the ALJ would be required to find plaintiff disabled if all the evidence were
14 properly evaluated, remand is appropriate. See Garrison, 759 F.3d at 1021.

15 In this case, there is an outstanding issue that must be resolved before a final
16 determination can be made. In an effort to expedite these proceedings and to avoid any
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18 ⁹(...continued)
19 with the symptoms and limitations [she] alleges." Id. at 24-25.] Finally, she noted that his
20 allegations were "simply not consistent" with the evidence. Id. at 25.]

21 None of these reasons for disregarding Mr. Lopez' testimony was a valid reason "germane"
22 to the witness. Lewis v. Apfel, 236 F.3d 503, 511 (9th Cir. 2001). First, plaintiff's personal
23 relationship with the lay witness is not a valid reason to discount his observations. Diedrich v.
24 Berryhill, 847 F.3d 634, 640 (9th Cir. 2017); see also Smolen, 80 F.3d at 1289 ("The fact that a
25 lay witness is a family member cannot be a ground for rejecting his or her testimony. To the
26 contrary, testimony from lay witnesses who see the claimant every day is of particular value; such
27 lay witnesses will often be family members." (citation omitted)). Second, lay witnesses are not
28 required to have medical training, or to provide exact details of their observations. That is what
makes them "lay" witnesses. See Diedrich, 874 F.3d at 640. Finally, a lack of support from the
"overall medical evidence" is also not a proper basis for disregarding a lay witness' observations.
Diedrich, 847 F.3d at 640 (citation omitted) ("Nor under our law could the ALJ discredit [the
witness's] lay testimony as not supported by medical evidence in the record."). The fact that lay
testimony and third-party function reports may offer a different perspective than medical records
alone "is precisely why such evidence is valuable at a hearing." Id. (citing Smolen, 80 F.3d at
1289 (holding that ALJ erred where the ALJ rejected the testimony of claimant's family members
about claimant's symptoms because the medical records did not corroborate those symptoms)).

1 confusion or misunderstanding as to what the Court intends, the Court will set forth the scope of
2 the remand proceedings. Because the ALJ failed to provide specific, clear and convincing
3 reasons, supported by substantial evidence in the case record, for discounting plaintiff's subjective
4 symptom testimony, the ALJ on remand, in accordance with SSR 16-3p, shall reassess plaintiff's
5 subjective allegations and either credit her testimony as true, or provide specific, clear and
6 convincing reasons, supported by substantial evidence in the case record, for discounting or
7 rejecting any testimony. Then, in light of the ALJ's reevaluation of plaintiff's subjective symptom
8 testimony and the medical and other evidence of record, if warranted, the ALJ shall reassess
9 plaintiff's RFC and determine at step four, with the assistance of a VE if necessary, whether
10 plaintiff is capable of performing her past relevant work as a housekeeper as generally
11 performed.¹⁰ If plaintiff is not so capable, or if the ALJ determines to make an alternative finding
12 at step five, then the ALJ shall proceed to step five and determine, with the assistance of a VE
13 if necessary, whether there are jobs existing in significant numbers in the regional and national
14 economy that plaintiff can still perform.

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26 ¹⁰ Nothing herein is intended to disrupt the ALJ's step four findings that plaintiff is unable to
27 perform her past relevant work as a home care provider, as a caregiver, or as a cleaner, medical
28 services, or that she is unable to perform the housekeeper work at a level greater than light work.
[AR at 26.]

VII.

CONCLUSION

IT IS HEREBY ORDERED that: (1) plaintiff's request for remand is **granted**; (2) the decision of the Commissioner is **reversed**; and (3) this action is **remanded** to defendant for further proceedings consistent with this Memorandum Opinion.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment herein on all parties or their counsel.

This Memorandum Opinion and Order is not intended for publication, nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

DATED: December 19, 2019



PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE